
IN THE MATTER OF THE ARBITRATION BETWEEN
FIRST STATE INSURANCE GROUP,

Petitioner

and

NATIONAL CASUALTY COMPANY,

Respondent

VOLUME: III

PAGES: 694-1140

BEFORE PANEL MEMBERS:

R. Michael Cass, Chairman

Paul N. Steinlage

Dennis C. Gentry

Date: Thursday, February 12, 2004

Held at: Wyndham Hotel

89 Broad Street

Boston, Massachusetts

Commence: 8:30 a.m.

Reporter: Judith McGovern Williams,

CSR, RPR, CRR

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1 that you begin to look at and consider and
2 put it into your framework.

3 CHAIRMAN CASS: Okay. That's
4 all I have.

5 ARBITRATOR GENTRY: Did we
6 stimulate you guys?

7 MR. KAREKEN: Nothing further
8 from me.

9 MR. GURA: One quick question on
10 Grace.

11 FURTHER RECOSS EXAMINATION

12 BY MR. GURA:

13 Q. I believe you agreed that the liabilities
14 for Grace exceed the coverage?

15 A. I believe they do. Yes.

16 Q. If the liabilities exceed the coverage,
17 they are going to blow through their
18 coverage, but whether the coverage is 50 X
19 of 100 or 40 excess of 80? Correct?

20 A. Yes.

21 Q. Okay. And so, therefore, instead of
22 paying your percentage of the 50 million,
23 you would pay, because they are going to
24 exceed -- they are going to blow through

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1 from that if they had gone with a ground
2 up approach and would have paid 5 million,
3 in my example, instead of 8 million.

4 Q. But would you have eventually paid, if
5 they didn't do that deal, the full amount?

6 A. We're not talking about if they hadn't
7 done the deal. We're talking about with
8 the deal they did, what is the proper way
9 to apply those payments, and the proper
10 way to apply those payments -- again in my
11 opinion -- is that you would only get -- I
12 know we are picking numbers again -- but
13 it is 5 million instead of 8 million. It
14 is something less than the way it was
15 presented. So you wouldn't have gone
16 through it, because it was capped. A
17 settlement was entered into. The question
18 is what do you do with the settlement
19 dollars in terms of ceding it to
20 reinsurers.

21 Q. You should cede it in a manner different
22 than the way you settled it is what you
23 are suggesting?

24 A. No. AIG paid up to 80 percent of their

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1 that layer anyway, what happened here was
2 you are paying your percentage of
3 40 million; isn't that right?

4 A. Well, let me clarify an earlier answer, I
5 guess. I may have answered too quickly to
6 your answer, but. While Grace will blow
7 through that coverage block, because they
8 have billions of dollars of exposure
9 potentially, they will not blow through
10 AIG's coverage, because that has been
11 capped at 80 percent. They will never
12 reach 100 percent payments against AIG's
13 coverage, which is the concession that
14 First State received.

15 Q. Had they not capped their exposure at
16 80 percent, you would have paid your
17 percentage of 50 million instead of your
18 percentage of 40 million; isn't that
19 right? The settlement benefitted AIG,
20 NERCO, and NERCO's reinsurers; isn't that
21 right?

22 A. The settlement benefitted AIG. They paid
23 20 percent less. The billing to First
24 State, as I indicated, they didn't benefit

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1 limits. As we have discussed, there was
2 nothing in the settlement agreement that
3 suggested that the way you do that is you
4 put 80 percent into the first policy and
5 then skip to the next policy.

6 Q. All right.

7 MR. GURA: I don't have anything
8 further.

9 CHAIRMAN CASS: Thank you,
10 Mr. Myhrer. Well, you're finished.

11 MR. KAREKEN: Yes, yes, yes.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 (Witness sworn.)

15 HANNAH HURYK, SWORN

16 DIRECT EXAMINATION

17 BY MR. KAREKEN:

18 Q. Good afternoon, Ms. Huryk.

19 A. Hello.

20 Q. Hannah, you are a manager with Nationwide
21 Indemnity regarding assumed reinsurance
22 business? Is that right?

23 A. That's correct.

24 Q. And your unit is the asbestos long-term

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1 insurance career.
 2 Q. The work that you did with Cigna was
 3 direct coverage; correct?
 4 A. That is correct.
 5 Q. And general liability?
 6 A. I did general liability, and I also did
 7 excess and surplus lines liability.
 8 Q. Okay. And when you first came to Wausau,
 9 you were working in the reinsurance
 10 assumed department, but were handling
 11 environmental claims; correct?
 12 A. That's correct.
 13 Q. You were designated to testify at this
 14 proceeding regarding the reasons why
 15 National Casualty believes that it is not
 16 responsible for paying the OCF claim as it
 17 has been ceded to National Casualty under
 18 the respective treaties?
 19 A. That's correct.
 20 Q. And correct me if I am wrong, Hannah, but
 21 you have been involved with respect to
 22 OCF, asbestos nonproduct billings that
 23 come into our office from many different
 24 sources; correct?

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1 A. Yes. That's correct.
 2 Q. Do you recall approximately when that was?
 3 A. Well, that would have been in -- at some
 4 point in the 2001 year. My specific
 5 recollection is that at some point in
 6 2000, the early part of 2001, we received
 7 the notice of claim billing from First
 8 State. It involved the three cessions,
 9 their direct settlement, their settlement
 10 on behalf of International, and their
 11 settlement on behalf of Aetna. Without
 12 reciting all of the detailed information,
 13 I think that Bill Wigmanich did a fair job
 14 in explaining to you what the nature of
 15 all of those issues and what the claim was
 16 about. It was a fair recitation, so I
 17 won't go into all of that with you.
 18 At some point, we noticed that
 19 this is a very complex matter. It took
 20 First State years to fully evaluate and
 21 adjust. It took International years to
 22 adjust. It took Aetna many years to
 23 adjust.
 24 And so, having a need to audit

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1 A. That's correct.
 2 Q. Okay. And you had responsibility for
 3 dealing with the OCF cession we received
 4 from First State?
 5 A. That's correct.
 6 Q. From the time that basically we learned
 7 that First State would be sending us,
 8 ultimately, an OCF presentation?
 9 A. Yes.
 10 Q. And you were the lead person in that
 11 respect; correct?
 12 A. That's correct.
 13 Q. So that the communications between
 14 National Casualty and First State about
 15 OCF, both the direct coverage and the
 16 two assumed claims for International and
 17 Aetna, were your responsibility on a
 18 day-to-day basis?
 19 A. Yes. That's correct.
 20 Q. And there came a point in time when you
 21 decided that you, on behalf of National
 22 Casualty, needed to look at more than what
 23 had been provided to you at that point by
 24 First State? Is that right?

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1 this claim and go out and understand what
 2 went on and how it was handled, we
 3 determined that we needed an audit. It
 4 often takes us, oh, six, eight, maybe
 5 ten weeks to schedule an audit with First
 6 State to get a date, to prepare our files,
 7 to allow them to prepare their files and
 8 gather them up for our audit. So the
 9 audit was conducted in October and
 10 November of 2001.
 11 I believe it was introduced into
 12 evidence the schedule that showed who went
 13 on what audits, and I did attend the audit
 14 in Boston and the audit in Hartford
 15 specific to Owens Corning personally back
 16 then.
 17 Q. And you were the one who actually looked
 18 at materials provided at that point
 19 regarding Owens Corning? Correct?
 20 A. That's correct.
 21 Q. At some point after that, did you
 22 communicate further with First State about
 23 your view of what you had seen or what you
 24 thought of their presentation?

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1 A. Well, during the audits, as we gathered
2 documentation, we looked at the files in
3 Boston, and we looked at the files in
4 Hartford. There was a substantial amount
5 of information provided to us the first
6 time, and I will say that the material
7 that I put on my photocopy request forms
8 is material that I saw.

9 We have had a lot of
10 disagreement, I think, about what does
11 seeing and reviewing and having an
12 opportunity to obtain information and
13 analyze information mean. I went there.
14 I spent days tagging documents in Hartford
15 and days tagging documents in Boston. I
16 even spoke to -- went so far as to speak
17 to the claims examiners in Boston to
18 determine what went on, what -- how they
19 got to their settlement. And I would like
20 to talk a little bit about some of that.

21 ARBITRATOR GENTRY: This was in
22 2001?

23 THE WITNESS: This was in 2001.

24 ARBITRATOR GENTRY: Thank you.

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1 A. The Aetna settlement in Boston, we went
2 and looked at the NERCO file for the Aetna
3 settlement. It was clear to us that NERCO
4 was raising much the same issues that we
5 were raising; the issue over the number of
6 occurrences, the basis of the settlement,
7 the access to records. The correspondence
8 is in your binders. It is voluminous.
9 And the requests from NERCO to Aetna are
10 the same sorts of things we looked at.

11 When they finally settled with
12 Aetna, I saw no documentation in the
13 claims file which gave me reason to
14 believe that the 30 percent discount they
15 got was based on anything. So I asked --
16 I talked to Paul Higgins, and Mr. Lagana
17 was in the room when I talked to Paul
18 Higgins, and my notes of those
19 conversations are also in your binders.

20 Mr. Higgins -- my recollection
21 of my conversation with Mr. Higgins, and I
22 am sure I will get an opportunity to look
23 at the notes and talk about exactly what
24 it is they say -- is that he did no

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1 analysis of their chances of winning on
2 any of the issues that were involved.
3 That he would talk to Steve Bencher, and
4 he would tell Steve Bencher that he would
5 never give him more than 50 percent.
6 Steve would say, I'm not going to take
7 less than 80 percent, or something like
8 that. Ultimately, they -- the
9 conversation went higher than Paul and
10 Steve Bencher. It went to a level of
11 management higher than the two of them,
12 and that ultimately they agreed on 70
13 percent. Paul never represented to me
14 that the basis was anything other than a
15 negotiated settlement to make the claim go
16 away or that it was a single separate
17 occurrence.

18 Likewise with the International
19 claim cession. When I looked at their
20 files, Mr. Dowd wrote several letters
21 asking for information, explanation,
22 documentation relative to their positions
23 in the litigation between -- an ADR
24 between International and Owens Corning.

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1 The file went right up to December of
2 2000. And
3 in December of 2000, as you heard
4 Mr. Wigmanich testify to, they agreed to
5 pay a portion of the billing and arbitrate
6 the balance, and the idea being that if
7 the arbitration panel determined if NERCO
8 didn't owe it, then they would get money
9 back, and if the arbitration Panel agreed
10 -- decided that they did owe it, they
11 would pay more.

12 Well, there was nothing in the
13 claim file after that letter except for
14 the check request that you have seen
15 yesterday or earlier this week when
16 Mr. Wigmanich was testifying, and that
17 check request says when we pay them,
18 they'll pay us. And it seemed to us at
19 the time that that was actually the basis
20 of their settlement with International.
21 When we pay them, they'll pay us.

22 I talked to Mr. Dowd, and at the
23 time -- and you see my notes are in the --
24 I did take notes of that conversation as

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1 well, and those notes are in there. At no
2 time did Mr. Dowd suggest to me that the
3 settlement was predicated on a single
4 separate occurrence. There were internal
5 conversations.

6 "Mr. Dowd, is there any notes or
7 information, subject, that describes your
8 internal conversations?"

9 "No. There was no notes. There
10 is nothing kept. We talked -- we had
11 several conversations. You know, the
12 claims came in, and things were
13 developing, and ultimately we decided to
14 pay it."

15 That is my understanding of how
16 they settled that claim.

17 I have to say that I was
18 surprised to hear Mr. Wigmanich say this
19 past week that their decision to pay First
20 State directly influenced his decision to
21 pay the International claim. That when
22 they paid them, they -- when First State
23 paid them, International would pay First
24 State. I didn't understand anything about

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1 back and forth, but I didn't hear him say
2 it was a quid pro quo. Is that what you
3 are saying he said?

4 THE WITNESS: That was my
5 understanding of what he said.

6 MR. GURA: Exactly the opposite.

7 THE WITNESS: That is my
8 understanding of what the reason for
9 payment on the check request was.

10 ARBITRATOR GENTRY: Okay. Fine.
11 That was your understanding.

12 A. When I visited Hartford, there was a
13 substantial amount of information
14 provided. Again, this is October or
15 November of 2001. When we went there, I
16 took some notes. The notes are in the
17 binder. You know I took some notes.
18 There is no dispute I took some notes.
19 But it took me three days to go through
20 the material that was originally provided
21 to us, and there is no way that I would
22 have reviewed and analyzed every piece of
23 paper in that claim file at the time that
24 I visited.

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1 it being through Odyssey. Maybe that is
2 true. I'm not sure. I really wasn't
3 clear on that. But it seemed to me that
4 Mr. Wigmanich's testimony earlier this
5 week indicated that the International
6 settlement was not settled on its merits
7 or on --

8 MR. GURA: I would object.
9 First of all, the witness is testifying on
10 what Mr. Wigmanich or the Panel will
11 evaluate what Mr. Wigmanich said about the
12 testimony offered at the hearing.
13 Obviously, I think I would also object
14 that the witness is mischaracterizing
15 Mr. Wigmanich's testimony.

16 MR. KAREKEN: I believe she is
17 entitled to give her opinion on it. It is
18 her own understanding of what he said.

19 ARBITRATOR GENTRY: It was a
20 surprise to me. That's why I -- my
21 eyeballs were getting wide, because I
22 didn't hear him say that, but I understood
23 that that was a part of the -- there was a
24 relationship there where checks did go

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1 Q. Could I stop you there for just a second?

2 A. Sure.

3 Can anybody stop me?

4 ARBITRATOR GENTRY: There has to
5 be a certain amount of control here.
6 (Laughter.)

7 Q. I think it was introduced into evidence
8 yesterday. It is a document, First State
9 101.

10 (Handing FS Exhibit No. 101 to
11 the witness.)

12 Q. The only reason I bring it up is -- this
13 is a letter that was directed from
14 Ms. Rackle to Mr. Schaefer regarding the
15 audit that you're describing?

16 A. That's correct.

17 Q. And your request for information?

18 A. That's correct.

19 Q. And the reason I bring it up is you were
20 the one who was doing the review of the
21 Owens Corning materials?

22 A. That's correct.

23 Q. So that in terms of the items listed here
24 that were requested, you were the one

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1 making those selections?

2 A. That's correct.

3 Q. Okay. On the cover letter, it says, "As
4 you are aware, it is our policy to remove
5 all privileged and confidential
6 documents"?

7 A. That's what the letter says. Yes.

8 Q. Okay. If you look at First State 102,
9 there was some testimony yesterday
10 concerning that.

11 (Handing FS Exhibit No. 102 to
12 the witness.)

13 Q. Was it your understanding when you were
14 examining the files related to Owens
15 Corning that privileged and confidential
16 materials were going to be withheld from
17 you?

18 MR. GURA: I am going to object
19 again on the same grounds. Mr. Cass
20 advised us not to -- you asked me
21 yesterday to move on on that document and
22 not delve further into it. Now he is
23 trying to elicit testimony from this
24 witness on this document when the

1 his characterization. I object to any
2 questioning of this witness on this issue.

3 CHAIRMAN CASS: We are going to
4 let him ask that question.

5 MR. GURA: Which is the question
6 that he can ask?

7 MR. KAREKEN: I just asked.

8 BY MR. KAREKEN:

9 Q. When you were conducting your review in
10 October, November -- I don't remember if
11 you said --

12 A. 2001.

13 Q. -- were you advised when you were tagging
14 materials and conducting your review, was
15 it your understanding that you were not
16 going to receive privileged and
17 confidential materials?

18 A. It was my expectation that they would not
19 be unreasonably withheld. This is a claim
20 that had been settled. This is the first
21 audit that we had conducted subsequent to
22 this agreement between Mr. Schaefer and
23 Mr. Wigmanich. It was a substantial
24 amount of information. The claim was

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1 agreement was between Mr. Schaefer and
2 Mr. Wigmanich and the Panel was taking it
3 for whatever it was. To now ask a party
4 not part of that agreement I think is
5 improper, especially when I was asked to
6 move on when questioning Mr. Schaefer
7 BY MR. KAREKEN:

8 Q. Were you aware of that item?

9 A. I was aware.

10 MR. GURA: I am going to object.
11 I think it is inappropriate, especially
12 since we never got this document in
13 discovery, and we couldn't ask her about
14 it.

15 MR. KAREKEN: I didn't ask her
16 about the document. I said was it your
17 understanding that privileged and
18 confidential materials were going to be
19 withheld as described in 101.

20 MR. GURA: No. He put that
21 document in front of her -- he put that
22 document in front of her, which was a
23 document which wasn't produced in
24 discovery, and so I totally disagree to

1 settled. We had this agreement that it
2 would not be unreasonably withheld, and I
3 had no expectation that they would
4 withhold.

5 MR. GURA: Objection. The
6 agreement doesn't say anything about
7 privileged and confidential. We went
8 through that yesterday, and I was
9 specifically asked not to question further
10 on it. Now this witness, he has gotten in
11 the door she somehow had an understanding
12 that we would be producing privileged and
13 confidential documents, when the only
14 testimony that has ever been elicited
15 here, including from Mr. Myhrer, is that
16 we have never photocopied and made copies
17 to the other side of the privileged and
18 confidential documents, even though we had
19 given them the right to look at them in
20 the past. This is totally improper. We
21 have never been granted any discovery on
22 the document.

23 MR. KAREKEN: We --

24 MR. GURA: I am speaking.

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1 the National Casualty examiner in
 2 preparing the correspondence. But
 3 National Casualty was not my
 4 responsibility at that time. If you will
 5 look at the letter, the Wausau letter
 6 probably has my name on it -- the Wausau
 7 letter definitely has my name on it, and
 8 the National Casualty does not. That is
 9 not my signature, but was authored
 10 primarily by me.
 11 Q. Was it your intention in sending out a
 12 letter in response to convey National
 13 Casualty's view of the presentation that
 14 had been made?
 15 A. Yes.
 16 Q. Do you consider the intent of the letter
 17 that you have in front of you in terms of
 18 its content and the position expressed to
 19 be substantially different than what is
 20 being argued in this case at this point
 21 regarding why National Casualty believes
 22 it doesn't owe the OCF presentation?
 23 A. Could you read that back to me? That is a
 24 long question.

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1 Q. Let me ask it a different way. You have
 2 reviewed the briefs that were presented on
 3 behalf of National Casualty in this case;
 4 correct?
 5 A. Yes. That's correct.
 6 Q. Do you believe that those briefs and the
 7 arguments they express or positions that
 8 they take to be inconsistent with the
 9 conclusions you drew back in 2002?
 10 A. No.
 11 Q. Would you explain to the Panel why you
 12 believe that National Casualty isn't
 13 obligated to fund the OCF presentation
 14 made by First State?
 15 A. Well, one, because we do not think that
 16 the presentation as submitted is in accord
 17 with the settlements as entered into by
 18 First State and NERCO with regard to its
 19 direct settlement and to its ceding
 20 companies, Aetna and IIC. We have asked
 21 them to define the occurrence for us. We
 22 have asked them to provide us with the
 23 records which demonstrate their cession.
 24 We have reviewed material and taken some

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1 notes and talked to the claim examiners.
 2 We have seen that there are -- we just
 3 don't see that the settlement -- that
 4 there is any agreement between the parties
 5 that the settlement is predicated on a
 6 single separate occurrence. We don't
 7 understand how thousands and thousands of
 8 claimants being injured from exposure to
 9 asbestos during an operation from any time
 10 from 1952 to 1972 in places all over the
 11 country, and who the heck knows where
 12 else, can constitute a single occurrence,
 13 and when we reviewed the documents, we
 14 didn't see anything to support that that
 15 is the basis upon which First State
 16 settled its direct claims or its claim
 17 with Aetna or its claim with
 18 International.
 19 I believe Mr. Wigmanich
 20 testified that they weighed a variety of
 21 outcomes, zero occurrences, one
 22 occurrence, one additional occurrence,
 23 multiple occurrences, and came up with a
 24 dollar figure to resolve, which would be

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1 something that they could live with, to
 2 resolve the claim against them, and that
 3 does not suggest to me that the basis for
 4 the settlement is a single separate
 5 occurrence.
 6 We looked at -- I know Mr. Bill
 7 Bowman's memo in here is amongst the
 8 documents, and that memo says that this --
 9 it is a post settlement memo, and it says
 10 that the settlement is best viewed as
 11 acceptance of OCF's position, and I think
 12 the reason it has to be viewed that way is
 13 because otherwise I'm not sure how or even
 14 if First State would be able to make a
 15 reinsurance recovery on this particular
 16 loss.
 17 Q. Now you mentioned in your testimony the
 18 idea of defining the occurrence?
 19 A. Yes.
 20 Q. And you read Mr. Wigmanich's deposition
 21 after it was taken in December? Correct?
 22 A. I did review that.
 23 Q. And it was your view that in response to
 24 the questions that Mr. Wigmanich hadn't

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1 you have on OCF? Pretty much?
 2 MR. KAREKEN: I have another
 3 maybe 15 minutes, so if you would like to
 4 take a break. The other claims should go
 5 more quickly, because they're not as
 6 significant in terms of dollar values.
 7 CHAIRMAN CASS: How are you
 8 doing?
 9 THE WITNESS: I am fine, thank
 10 you.
 11 BY MR. KAREKEN:
 12 Q. So you have examined the briefs, correct,
 13 I think you said?
 14 A. Yes.
 15 Q. And you understand that it's First State's
 16 contention that National Casualty is
 17 obligated to follow First State's
 18 settlements as respects Owens Corning;
 19 correct?
 20 A. That's correct.
 21 Q. Can you as briefly as possible -- because
 22 we don't need to belabor the point --
 23 explain to the Panel why we don't agree
 24 with that assertion, "we" being National

1 Q. And that's because OCF was part of the
 2 original demand for arbitration that
 3 occurred in May of 2002?
 4 A. That's correct.
 5 Q. And the actual document discovery, as
 6 opposed to the audit in April-May, was
 7 conducted, I believe, in August?
 8 A. That's correct.
 9 Q. And you were also a participant in that,
 10 were you not?
 11 A. That is correct.
 12 Q. And that did involve production of
 13 documents relative to Owens Corning;
 14 correct?
 15 A. It was supposed to.
 16 Q. Okay. Now the Owens Corning documents
 17 were supposed to be made available at the
 18 Hartford location? Correct?
 19 A. That's correct.
 20 Q. And when you arrived there in August, were
 21 the OCF documents available?
 22 A. No. They weren't. Not the documents
 23 related to the nonproducts claims. When
 24 we arrived there in August of 2003 --

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1 Casualty?
 2 A. Well, in our evaluation of claims, we
 3 actually do want to follow their
 4 settlement from the beginning to the end.
 5 We want to see how it began, how it
 6 developed, how it was evaluated, how it
 7 was negotiated, and how it was settled,
 8 and then we want to evaluate how it was
 9 ceded to us, and in our evaluation of the
 10 material that we were allowed to have and
 11 the material that we were allowed to see
 12 and our recollections of what that is and
 13 my conversations with the adjusters, the
 14 cession to us on a single separate
 15 occurrence basis was not the manner in
 16 which it was settled.
 17 Q. Ms. Huryk, did you participate in the
 18 audit that was conducted in late April,
 19 early May, regarding the to-be-added
 20 Exhibit C claims?
 21 A. Yes, I was.
 22 Q. All right. And OCF was not a part of
 23 that; isn't that correct?
 24 A. That is correct.

1 right?
 2 Q. Yes.
 3 A. -- there were a variety -- there were a
 4 lot of boxes of Owens Corning materials.
 5 There were boxes and boxes and boxes of
 6 CCR reports relating directly to the
 7 product liability portion of this claim.
 8 We had already paid the product liability
 9 portion of the claim. There were a
 10 handful of claim files, also related
 11 strictly to the administration of the
 12 product liability claims.
 13 When we asked Jackie Rackle,
 14 where is the files related to the
 15 nonproducts portion, there isn't anything
 16 here related to nonproducts, she said she
 17 didn't know. The file was lost.
 18 I believe that Mr. Kareken wrote
 19 correspondence while we were sitting there
 20 looking for that information.
 21 What ultimately happened is we
 22 got -- I don't remember if it was one or
 23 two boxes of photocopies of documents.
 24 That was on Thursday, I think. They were

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1 shipped to us from Boston overnight mail,
2 and I want to say it was Thursday. It
3 might have been Wednesday, but I think it
4 was Thursday. We were only given until
5 Friday to complete our document discovery.
6 And these, in my view, just don't
7 constitute the claim file. They were a
8 box of photocopies. They were Bates
9 stamped for a purpose. I don't know what.
10 They're not the claim file.

11 Did we have an opportunity to
12 see whatever was in the boxes? Yes, we
13 saw what was in the boxes. Yes, Mark
14 tagged what was in the boxes, you know,
15 some of the documents that were in the
16 boxes. We certainly were not given an
17 opportunity to review those documents.
18 And we had no expectation at that point
19 that they would not be produced to us for
20 our analysis and evaluation after our
21 document discovery period.

22 It was not until the Panel
23 issued its order -- and I want to say that
24 was in October -- and First State said,

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1 A. No. I was of the expectation that what we
2 were shown and what we asked for copies of
3 we would be given.

4 Q. And in fact, your expectation was that
5 anything that they considered privileged
6 wouldn't even be produced to us and would
7 be identified on a log at some later
8 point?

9 A. That was my understanding.

10 Q. Now you have looked at the privilege log
11 that was produced by First State in this
12 matter?

13 A. Yes.

14 Q. And there is a copy of it up there, if you
15 want to refer to it, but the general
16 question that I have is that you looked at
17 the OCF file in 2001?

18 A. Yes.

19 Q. And you looked at some, one or two boxes
20 of stuff, in August of 2003?

21 A. That's correct -- well, we looked at them
22 together.

23 Q. Okay.

24 A. I think you will find that the August of

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1 "We're not going to give you those
2 documents," that we were made aware that
3 we would not have access to or be given
4 copies of those privileged documents or
5 whatever documents were in that box.

6 So, in my view, we were deprived
7 of the opportunity to see those things and
8 have a chance to evaluate and analyze
9 those documents. Even if we had been
10 given them, I would not testify here today
11 that we had been given a copy of the
12 files. In 2001, there was so much file
13 material related strictly to nonproducts,
14 it took me, by myself, three days to go
15 through. We got two boxes of photocopies
16 in August of 2003. It is not the files

17 Q. As opposed to the audit procedure, which
18 apparently has changed over time, did you
19 have the understanding when you went and
20 got the document discovery, as respects
21 OCF and A. H. Robins, that whatever we
22 were shown would not be photocopied and
23 produced to us of the items that we
24 requested?

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1 2003 photocopy requests, I think many of
2 them -- maybe all of them -- have your
3 name on them. We did document discovery
4 together. We would look at things and tag
5 them, and sometimes Mark would fill out
6 the photocopy request forms and sometimes
7 I would. It was a team effort. But yes.

8 Q. But the point being that you have seen the
9 OCF materials on two occasions?

10 A. Yes.

11 Q. Okay. And I guess the bottom line here is
12 that when you look at the privilege log,
13 okay, which does not identify the document
14 in terms of what claim it relates to, can
15 you determine that what you saw on the
16 request forms is in fact what is
17 identified on the privilege log?

18 A. I don't think that I would be able to do
19 that with any certainty.

20 Q. When you conducted your document review,
21 was it your understanding that you were
22 going to have to argue from documents that
23 you saw as to their content as opposed to
24 actually having it to be able to show to

81 (Pages 1011 to 1014)

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1 the Panel?
 2 A. Say that again?
 3 CHAIRMAN CASS: Yes. I would
 4 like to hear that one again, too.
 5 MR. KAREKEN: Okay.
 6 Q. You told me before that you had the
 7 expectation of getting copies?
 8 A. Yes.
 9 Q. So you weren't anticipating that you would
 10 see something there and then have to come
 11 and argue to the Panel without the benefit
 12 of the document?
 13 A. That's correct.
 14 Q. So it was your expectation to be able to
 15 show the Panel what it was that you had
 16 seen?
 17 A. Yes.
 18 MR. KAREKEN: If you wanted to
 19 break before I move on to a different
 20 claim.
 21 CHAIRMAN CASS: This is a good
 22 time. Very good. 4:15. How is that?
 23 MR. KAREKEN: Sure.
 24 THE WITNESS: Sure.

1 Q. What exhibit are you looking at there?
 2 A. This is No. 71.
 3 Q. So it was one of the letters attached to
 4 my July 18th letter?
 5 A. Yes.
 6 Q. And as a result of conducting your review,
 7 I think on the second page of that letter,
 8 you asked some questions; isn't that
 9 right?
 10 A. Yes. In fact, there are a number of
 11 questions throughout the correspondence.
 12 Q. And when you were there in 2002, did you
 13 get the sense that you were being given
 14 everything?
 15 A. Well, it is a little bit more difficult to
 16 answer, because it is clear that from my
 17 correspondence that we were unable to
 18 resolve a variety of issues after having
 19 reviewed the claim file during our audit,
 20 which is why the January 14th
 21 correspondence raises a number of
 22 questions. At the time that we were
 23 there, the 2002 audit, we spoke about --
 24 my recollection is that Mr. Schaefer,

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1 (Recess taken at 3:59 p.m.)
 2 (Recess ended at 4:23 p.m.)
 3 BY MR. KAREKEN:
 4 Q. Hannah, let's talk for a minute about the
 5 Shook & Fletcher claim.
 6 A. Sure.
 7 Q. It is your understanding that that claim
 8 involves the same issue of nonproduct
 9 asbestos being a separate single
 10 occurrence?
 11 A. Yes. That's correct.
 12 Q. And the Shook & Fletcher claim was or
 13 wasn't part of the original demand that
 14 came in May of 2002?
 15 A. It was not.
 16 Q. Do you recall whether in fact you
 17 examined, audited, investigated the claim
 18 prior to conducting discovery in the
 19 arbitration?
 20 A. Yes. Actually, my recollection is that it
 21 was audited as a part of our fairly annual
 22 audit in October and November of 2002,
 23 which led to my correspondence of
 24 January 14, 2003.

1 Ms. Micacci, myself, took time out to
 2 speak with Fred Zwick about the Shook &
 3 Fletcher claim and the basis of its
 4 settlement with -- First State's
 5 settlement with Shook & Fletcher, and it
 6 is my recollection that Mr. Zwick told us
 7 that the basis of the settlement was more
 8 than one, less than thousands, and was not
 9 based on agreement or application of a
 10 particular view on a number of
 11 occurrences, but that it represented a
 12 compromise between First State's best
 13 outcome and the policyholder's best
 14 outcome.
 15 Q. And when you say more than one, but less
 16 than thousands, you are referring to the
 17 element of the claim that related to
 18 nonproduct asbestos?
 19 A. Yes. The nonproducts portion. My letter
 20 indicates that First State was aggregating
 21 product claims together based on the fact
 22 that the various products -- that various
 23 products contained asbestos. That
 24 statement I'm sure is based on documents

82 (Pages 1015 to 1018)

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1 good claim person and steward of my
2 company's money, it is just important for
3 me to see how First State went from first
4 notice to settlement. It is a simple
5 process. Every claim tells a story, and
6 all we wanted to see was the story. We
7 needed to evaluate and determine if the
8 settlement as billed to us, and we were
9 only billed the toxic tort portion, was
10 settled and allocated in accordance with
11 their claim file documentation.

12 When we went out, we looked at
13 the Safety Kleen file. I think that we
14 were not able to do that. The reason we
15 weren't able to do that is because the
16 files related to the whole settlement were
17 not made available to us. So we were
18 unable to evaluate whether or not the
19 claim as billed to us was ceded in
20 accordance with the way that it was
21 settled, and because First State had put
22 this claim into the arbitration in January
23 as part of its Exhibit C additions, it is
24 difficult for us, I think, to gather

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1 received by National Casualty prior to its
2 inclusion on Exhibit C in January of 2003?
3 Correct?

4 A. I believe that's correct.

5 Q. It would have been one like Safety Kleen,
6 one that was reviewed by you and
7 Mr. Myhrer in the April-May of '03 audit?

8 A. I believe that that's correct.

9 Q. Can you explain in your own words for the
10 Panel why National Casualty believes it
11 does not owe the Pfizer claim as
12 presented?

13 A. Well, Pfizer is a little bit different
14 from Safety Kleen in that it is a
15 Wellington claim, and we have paid
16 Wellington claims to First State in the
17 past, and we have paid other years on
18 Pfizer as a matter of fact. I think you
19 will find in your exhibits and your
20 documentation that I asked for a couple of
21 pieces of information, proof of payment
22 and a CCR report which demonstrated the
23 payment to the policy.

24 Subsequent to our audit in

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1 information, and it was made difficult for
2 us to gather information. The claim files
3 were not provided.

4 In fact, in past years, First
5 State had had the question forms that we
6 were allowed to use, a blue question form,
7 that we were allowed to ask for
8 information, you know, this document is
9 referenced or that document is referenced.
10 You saw one that I had -- I don't remember
11 which claim it was -- I want to say on
12 Pulmosan -- where I asked specific
13 questions. And we weren't allowed to ask
14 questions about this. We asked where the
15 files were. We simply can't fully
16 evaluate the complex nature of the Safety
17 Kleen file without understanding the
18 nature of the pollution exposures, the
19 nature of the toxic tort exposure, the
20 nature of -- and the rationale behind the
21 way they allocated the \$2 million that
22 they paid.

23 Q. So Safety -- I am sorry -- Pfizer was
24 another claim that hadn't been billed or

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1 2004 --

2 Q. 2003 you mean?

3 A. Excuse me. 2003. It is not 2004 yet.

4 -- Mr. Lagana forwarded those
5 documents to me. Eli Lilly, if I might,
6 is substantially similar in that we were
7 looking for a layoff slip for Eli Lilly.
8 It is the DES claims, and we had paid
9 other years for Eli Lilly in a DES claim,
10 and in all honesty, if these documents had
11 been provided to us in the normal course
12 of business as opposed to having First
13 State throw these two claims into
14 arbitration, the likelihood is when they
15 gave us those documents that we would have
16 paid those claims. However, First State
17 chose to have those claims adjusted in the
18 course of litigation as opposed to the
19 normal course of business. In my view, I
20 have to now look at all of these
21 documents. I have to see what they have.

22 We have had a very serious issue
23 with them over the production of documents
24 and what does inspect records for the

85 (Pages 1027 to 1030)

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1 purpose of obtaining information mean. We
2 believe it means that you have to show us
3 the whole claim file and we're entitled to
4 have copies of anything in the file that
5 we want. We pay to have the copies made.
6 Ikon comes in. They do the copying. They
7 don't spend their staff time. They don't
8 spend their own money to make copies. We
9 pay for that. So to the extent I want
10 anything in the file, if I am willing to
11 pay for it, I think I am entitled to have
12 it.

13 One of the things we go -- one
14 of the reasons we go out to audit is just
15 for purpose of determining that they are
16 actually handling claims, that they are
17 not willy-nilly writing checks. And to be
18 honest, for the most part, we have found
19 that they handle their claims. We also
20 still think that we're entitled to have
21 these records.

22 When First State places these
23 claims as simple as a Pfizer claim, as
24 simple as an Eli Lilly, where all we

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1 a disagreement about what that means, and
2 that is part of what you people will be
3 deciding for us. I have a concern about
4 the no-show policy that I heard about the
5 first time this week and the course of
6 conduct and the material I will be allowed
7 to see in the future for claims as simple
8 as an Eli Lilly or a Pfizer, as complex as
9 an Owens Corning or Shook & Fletcher, AC&S
10 nonproducts claim. In the context of this
11 litigation, I simply cannot pay those
12 claims without being given full access to
13 all records, to inspect and obtain
14 information as I see I need it.

15 Q. And the other claim, and the last claim,
16 that you have testimony to give concerning
17 is Eli Lilly, and unless I am mistaken,
18 you kind of explained in your last answer
19 why we have concern about that?

20 A. Yes.

21 Q. Okay. And the issue or discussion has
22 been had in this proceeding about whether
23 you received the layoff with the letter in
24 April, I think it was?

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1 really need is a layoff slip or CCR report
2 and a proof of payment, into litigation,
3 and we go out to audit them, and files are
4 not produced or pieces of files are
5 produced or they give us a privilege log
6 that has 757 documents which are claimed
7 to be privileged and another three or four
8 hundred that are claimed to be irrelevant,
9 and I can't tell which files those things
10 go to, I can't waive my right to have that
11 access to records any longer, even for a
12 claim as simple as an Eli Lilly or as
13 simple as a Pfizer, because if I do it
14 there, I become concerned about having
15 waived my rights for other claims. I
16 become concerned about a course of conduct
17 used against me. I didn't need it there,
18 so why do I need it here? I have a right
19 to access the records. I have a right to
20 obtain information. And my view of that
21 means I have a right to have copies of
22 that information if I want it.

23 We have a disagreement about
24 what that means. It is clear that we have

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1 A. Yes. That's correct.

2 Q. And I think you testified at your
3 deposition that in fact those items were
4 not attached?

5 A. That's correct. We had asked for the
6 layoff slip. In April, they forwarded a
7 letter that purported to have the policy,
8 the layoff slip, and I want to say a proof
9 of payment. You have the letter. Maybe
10 it doesn't say proof of payment, but
11 anyway, my review of that was that it was
12 not attached.

13 Now I don't have a clear
14 recollection. We went out to Boston in
15 the last two weeks of April of 2003, and
16 it may be that that letter and our audit
17 sort of coincided, that that was received
18 in our office the same time we were in
19 Boston. I didn't have it when we went to
20 Boston. I asked Mr. Lagana if he had the
21 policy and the layoff slip, and he told me
22 that it was lost, that they could not find
23 it.

24 So when I got back to the

86 (Pages 1031 to 1034)

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1 office, when I had my first opportunity to
2 review the letter from Hartford or from
3 Willis which purported to have the policy
4 and the layoff, it wasn't there, and I was
5 told it was lost, so I had no reason
6 really to believe that it wasn't.

7 We did get a copy of it.
8 January 9th, we have a letter from
9 Mr. Lagana that says, "Here is a copy of
10 the layoff slip."

11 I would like to be able to pay
12 that claim, but in the context of this
13 litigation, given the difficulties and the
14 issues we have surrounding the inspection
15 of records clause and what that means, at
16 this point, I'm willing to allow and to
17 ask that you decide that.

18 MR. KAREKEN: I would move for
19 the introduction of this exhibit, but I
20 won't if First State is willing to agree
21 that in fact the layoff slip in question
22 was sent on January 9th by Mr. Lagana to
23 Mr. Myhrer.

24 MR. GURA: I will certainly

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1 very valid defense to coverage under the
2 terms of these treaties.

3 MR. KAREKEN: I believe we have
4 covered all of the direct testimony of
5 Ms. Huryk, unless there was something else
6 you want to add.

7 THE WITNESS: No. I said that
8 was the last thing, and I think that is
9 the last thing I want to say.

10 MR. KAREKEN: We are done with
11 direct.

12 CHAIRMAN CASS: All right.

13 MR. GURA: I took a lot of
14 notes. You said a lot of things. I am
15 hoping to go pretty quickly.

16 CHAIRMAN CASS: Okay. Thank
17 you.

18 MR. GURA: I am sure it will be
19 made aware to me if I am not.

20 CROSS EXAMINATION

21 BY MR. GURA:

22 Q. Ms. Huryk, I would like to start by asking
23 you some questions about the audit
24 procedures --

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1 agree that that is -- this letter is the
2 cover sheet from Mr. Lagana to Mr. Myhrer
3 enclosing a copy of the layoff slip with
4 respect to the Eli Lilly claim and is
5 dated January 9, 2004.

6 MR. KAREKEN: Unless the Panel
7 wants a copy, we will just leave it at
8 that.

9 CHAIRMAN CASS: That is fine.

10 THE WITNESS: If I might add one
11 last thing that I would like to say.

12 Is it going to be the last?

13 Will it actually be the last?

14 MR. GURA: He doesn't even have
15 to ask the question.

16 MR. KAREKEN: I guess I have
17 become superfluous.

18 (Laughter.)

19 THE WITNESS: I would like to
20 say that in terms of Eli Lilly, Safety
21 Kleen, Pfizer, and even Pulmosan, I think
22 that the material breach of contract and
23 the lack of access to records, material
24 that we have not been provided with, is a

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1 A. Sure.

2 Q. -- at First State/Hartford. You have
3 audited both at Boston and Hartford?
4 Correct?

5 A. Yes.

6 Q. And the first time you audited, was that
7 in 2001? You can look at our chart. I am
8 not trying to trick you. It is right
9 there.

10 (Handing FS Exhibit No. 99 to
11 the witness.)

12 Q. I think from your testimony you said 2001?

13 A. That says the first time. I thought I had
14 been there earlier than that. I thought I
15 had been there in 2000, but.

16 Q. That is fine. It doesn't matter, 2000,
17 2001.

18 A. I audited with the team often and fairly
19 regularly since my employment with the
20 company.

21 Q. And you have heard Mr. Wigmanich explain
22 and describe First State's procedures
23 concerning audits and the access to and
24 production of privileged documents; isn't

87 (Pages 1035 to 1038)

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1 that right?

2 A. Yes.

3 Q. And I think he described it as initially

4 access was given and privileged documents

5 were not produced in writing or that

6 photocopies were not made and produced to

7 reinsurers? Do you recall that?

8 A. I do recall that he said that.

9 Q. Okay. In 2001, is it your testimony that

10 you expected to receive copies of

11 privileged documents?

12 A. Yes. That was my expectation.

13 Q. That is the October-November audit?

14 Correct?

15 A. Yes.

16 Q. Obviously, you would have looked at those

17 privileged documents during that audit?

18 That is why you had that expectation?

19 Correct?

20 A. I did look at them. Yes.

21 Q. Okay.

22 A. I had a table full of material. Yes.

23 Q. And there was some discussion, and you saw

24 us all fighting, and you are familiar with

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1 expressing your shock and amazement at the

2 change in the policy that they are no

3 longer giving you copies of the privileged

4 and confidential documents?

5 A. I believe that in my denial letter on

6 Owens Corning I do express my shock and

7 amazement at having 500 pages of documents

8 withheld.

9 Q. That's in --

10 A. In relation to the single claim?

11 Q. Right.

12 A. Yes.

13 Q. Let's go to that. That was your January

14 -- no, no, no. I am sorry. That was your

15 January 9, 2002 letter?

16 A. That is the January 9th. It was signed by

17 Mr. Cohen, and I testified that --

18 Q. Yes. That you basically drafted it?

19 A. Yes.

20 Q. And you are from Wausau, and he signed his

21 name?

22 A. Yes.

23 CHAIRMAN CASS: What?

24 ARBITRATOR STEINLAGE: What

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1 the Fred Schaefer/Bill Wigmanich report?

2 A. You mean the letter?

3 Q. Yes. The letter.

4 A. Yes.

5 Q. What is the date of that letter?

6 A. The date of the letter is April 2001.

7 Q. And this letter, that you know is an

8 exhibit here, it is First State 101, the

9 letter from Jackie Rackle to Fred

10 Schaefer --

11 A. That's correct.

12 (Handing FS Exhibit No. 101 to

13 the witness.)

14 Q. -- you have seen that?

15 A. Yes.

16 Q. This is now a letter written in response

17 to that 2001 audit in November -- October

18 and November, and she says quite clearly,

19 "As you are aware, it is our policy to

20 remove all privileged and confidential

21 documents" from the materials we sent to

22 you; correct?

23 A. That's correct. That's what that says.

24 Q. Did you ever write a letter to First State

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1 exhibit again is that?

2 MR. GURA: Exhibit 16.

3 ARBITRATOR STEINLAGE: I am

4 getting my exhibits mixed up. Where you

5 are referring to the denial letter? It

6 would be attached to Mark's?

7 MR. GURA: No. It is Exhibit

8 No. 16, sir.

9 MR. KAREKEN: It is also

10 included in --

11 THE WITNESS: Right. Also

12 attached to Mark's July 18th letter as

13 Exhibit 71.

14 ARBITRATOR STEINLAGE: Excuse

15 me.

16 CHAIRMAN CASS: We have got it.

17 ARBITRATOR STEINLAGE: We have

18 got it. I was looking at it from another

19 place.

20 BY MR. GURA:

21 Q. You don't say anywhere in this letter that

22 there is a change in policy from the

23 Hartford or First State? Correct?

24 A. That's correct.

88 (Pages 1039 to 1042)

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1 Q. We can see a photocopy request form, this
 2 time not from Boston, but from Hartford;
 3 correct?
 4 A. That's correct.
 5 Q. And this is the discovery audit that you
 6 participated on? Right?
 7 A. That's correct.
 8 Q. Okay. And as you mentioned, there was
 9 some things brought in late or whatever to
 10 the audit?
 11 A. Yes.
 12 Q. This says, "Box No. 2 shipped from
 13 Boston"? Do you see that?
 14 A. That's correct.
 15 Q. Okay. And there is a number of documents
 16 that you are writing down, and these are
 17 the documents that you looked at, correct,
 18 during that audit? That is what you are
 19 writing here? You want copies of
 20 documents that you see during the audit?
 21 Right?
 22 A. Yes.
 23 Q. Okay. And one of them is this Bowman to
 24 file, Hartford, OC analysis, do you see

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1 Q. Okay. Thank you. If you go back then to
 2 the next page, which is 1574, Bowman to
 3 Reilly, Bowman to Reilly, Dolin to Bowman,
 4 Bowman to Kubas, Bowman to Reilly, e-mail,
 5 e-mail re: settlement proposal, Bowman to
 6 Kubas, Mnookin to Bowman, Bowman to file.
 7 Do you see all of those various
 8 things? And I'm not going to go through
 9 more, but basically, these are the
 10 materials that you looked at. The Panel
 11 can go through this to see what you looked
 12 at. These are the documents that you
 13 looked at during your audit; correct?
 14 A. These are documents that were put in a
 15 box, shipped to us from Boston. They came
 16 to us on the 19th. We got a chance to
 17 look at them on the 20th. We were looking
 18 at a variety of things during that. We
 19 were given only the one week to do
 20 document discovery. To say that we saw
 21 these in the box that was sent to us is
 22 true, but to suggest that we had an
 23 opportunity to review and analyze all of
 24 these documents would not be a true

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1 that, of exhaustion?
 2 A. Yes.
 3 Q. There is certainly some other things,
 4 "Dolin to Bowman, why Hartford owes policy
 5 products. Prior to OC Chapter 11 filing.
 6 Roach to Hofer. New DJ checklist. OC's
 7 trial brief." Do you see that?
 8 A. Yes.
 9 Q. Turn two pages in front, I think that is
 10 1573 on the top, that is the HEF legal
 11 file that you were looking at when you
 12 were there; is that right?
 13 A. That's correct.
 14 Q. Letters concerning nonproduct and claim
 15 info, highlights of various meetings,
 16 overview of the settlement, OC creditors,
 17 changes to notice recipients, do you see
 18 that?
 19 A. Yes, I do. Whatever is there. There is a
 20 blue file, various files.
 21 Q. I am trying to point out various
 22 documents. I am going to read them
 23 quickly. This is what you saw?
 24 A. Yes. I agree. I saw these.

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1 statement.
 2 Q. Okay. I just want to make sure it is
 3 clear.
 4 A. As long as we are clear on that.
 5 Q. I understand your position. I just want
 6 to make clear the types of materials that
 7 were in the boxes that were provided to
 8 you, because I think there may be some
 9 question as to that. I want to make sure
 10 it is clear to the Panel what the types of
 11 materials were that were in those boxes.
 12 If you go on to the next page,
 13 it looks like 1576, you will see there is
 14 an exhaustion analysis, Bowman to Kubas,
 15 Bowman to Kelly. And if you go to the
 16 next page, there is more, Bowman to file,
 17 and other things. I am not going to go
 18 through all of these. Okay.
 19 MR. GURA: I would also like you
 20 to look at some of your 2001 audit request
 21 forms.
 22 (Mr. Gura handing documents to
 23 the Panel, counsel and the witness.)
 24 MR. GURA: This is FS 105.

94 (Pages 1063 to 1066)